SAME OLD SONG

AN ANALYSIS OF RADIO PLAYLISTS IN A POST-FCC CONSENT DECREE WORLD

NEW YORK STATE EDITION

Executive Summary

June 30, 2009

In July 2005, then-New York State Attorney General Eliot Spitzer announced the results of the Office's examination of the relationship between major labels and commercial broadcasters. "Our investigation shows that, contrary to listener expectations that songs are selected for airplay based on artistic merit and popularity, airtime is often determined by undisclosed payoffs to radio stations and their employees," Spitzer said as he announced the findings and settlement with the record label Sony BMG. "This agreement is a model for breaking the pervasive influence of bribes in the industry," he continued, referring to Sony BMG's agreement to stop making payments and providing expensive gifts to radio stations and their employees in return for airplay for the company's songs. In the following months, Spitzer announced additional settlements, eventually collecting more than $35 million in fines from the four major record labels and two radio station groups.

After completing its investigations, the Attorney General's office sent its evidence to the Federal Communications Commission. Two years later, in April 2007, the FCC issued consent decrees against the nation's four largest radio station group owners – Clear Channel, CBS Radio, Citadel and Entercom. In addition to paying fines totaling $12.5 million, the station group owners also worked with the American Association of Independent Music (A2IM) to draft eight "Rules of Engagement" and an "indie set-aside" in which these four group owners voluntarily agreed to collectively air 4,200 hours of local, regional and unsigned artists, and artists affiliated with independent labels.

It has been two years since the FCC, radio station group owners and independent labels met around the table. The immediate questions for the music and policymaking community are: Did these agreements serve their purpose? Have payola-like practices been curtailed? Did the agreements have any effect on what gets played on the radio?

In April 2009, FMC released a comprehensive, data-driven report called *Same Old Song*. Using playlist data licensed from Mediaguide, FMC examined four years of airplay – 2005-2008 – from national playlists and from seven specific music formats: AC, Urban AC, Active Rock, Country, CHR Pop, Triple A Commercial and Triple A Noncommercial. FMC calculated the "airplay share" for five different categories of record labels to determine whether the ratio of major label to non-major label songs had shifted in the past four years.

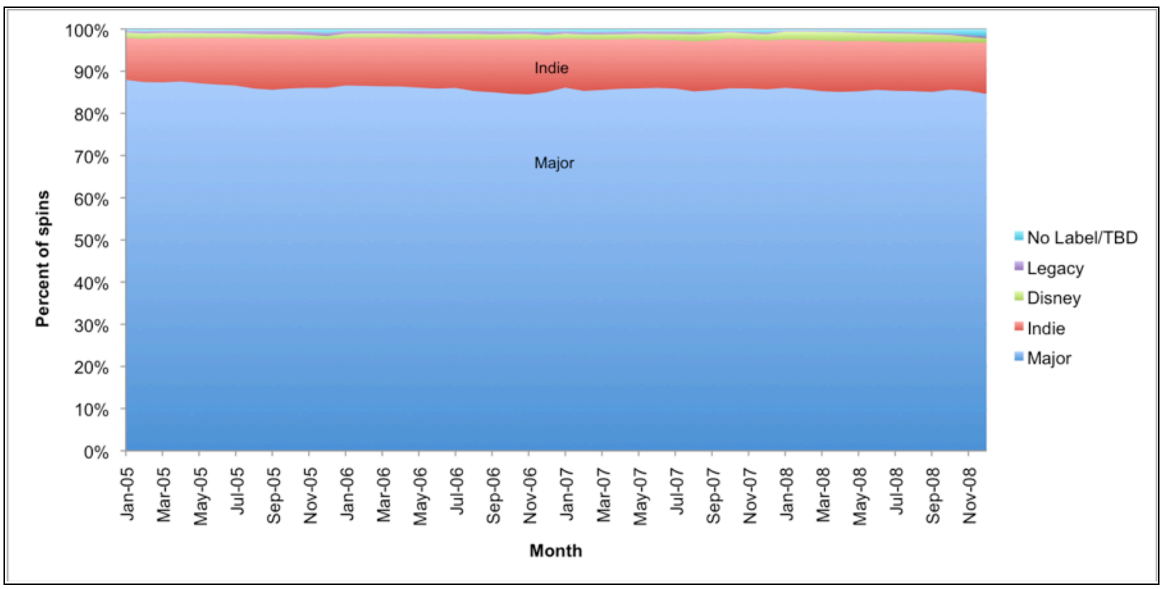
This report serves as a companion piece to *Same Old Song*. Using data licensed from Mediaguide and a similar methodology, it examines playlist data from music stations licensed in New York State, broadcasting in a variety of formats, from 2005-2008.

The data in the report indicates almost no measurable change in station playlist composition or independent label access at NY State stations over the past four years. While this may lead some to conclude that payola is alive and well, and that the Spitzer and FCC agreements were ineffective, the report instead views these results through the a broader lens and uses the data to describe the state of radio thirteen years after the passage of the 1996 Telecommunications Act. The playlist data analysis underscores how radio's long-standing relationships with major labels, its status quo programming practices and the permissive regulatory structure all work together to create an environment in which songs from major label artists continue to dominate. The major labels' built-in advantage, in large part the cumulative benefit of years of payola-tainted engagement with commercial radio, combined with radio's risk-averse programming practices, means there are very few spaces left on any playlist for new entrants. Independent labels, which comprise some 30 percent of the domestic music market, are left to vie for mere slivers of airtime, despite negotiated attempts to address this programming imbalance.

Specifically, the report shows that:

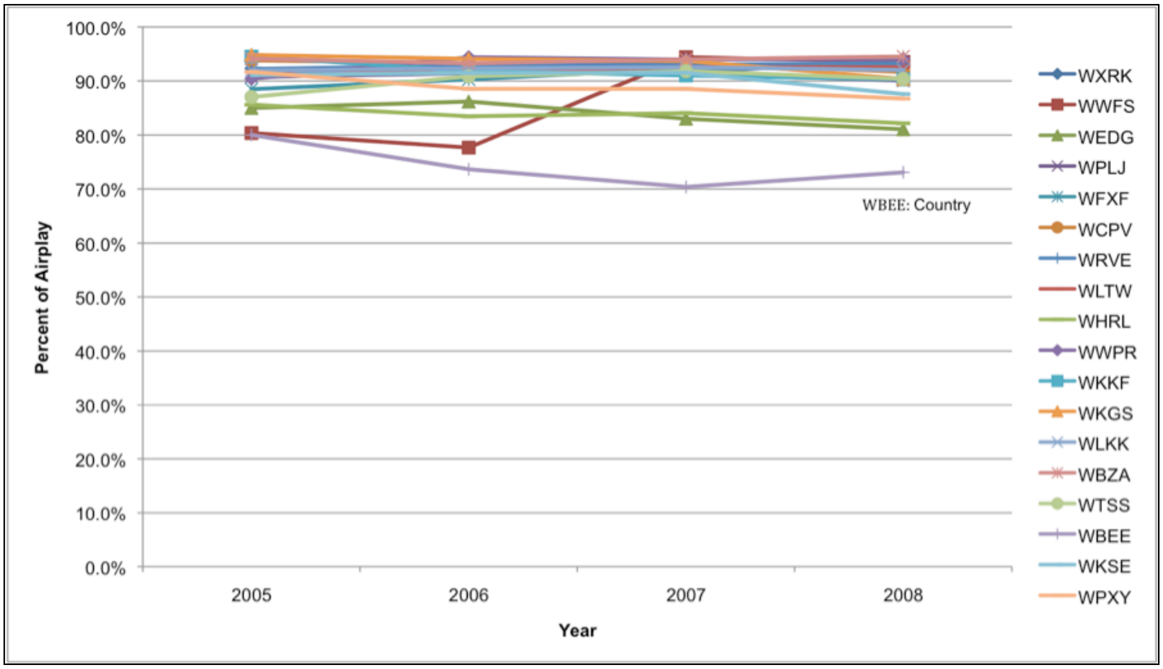
Playlist composition for music stations in NY State has remained remarkably consistent over the past four years. Similar to the findings in our national airplay report, *Same Old Song*, neither the statewide airplay charts nor the majority of commercial stations demonstrate measurable change in the share of airplay for major label versus non-major label songs over the past four years, despite specific policy interventions designed to increase access and airplay share for independent artists. The radio stations in NY State where fluctuations in airplay share are evident *are* typically noncommercial, public or college radio broadcasters – none of which are subject to the FCC consent decrees.

Chart 2: Airplay Share by Percentage of Spins: NY State Stations
2005-2008



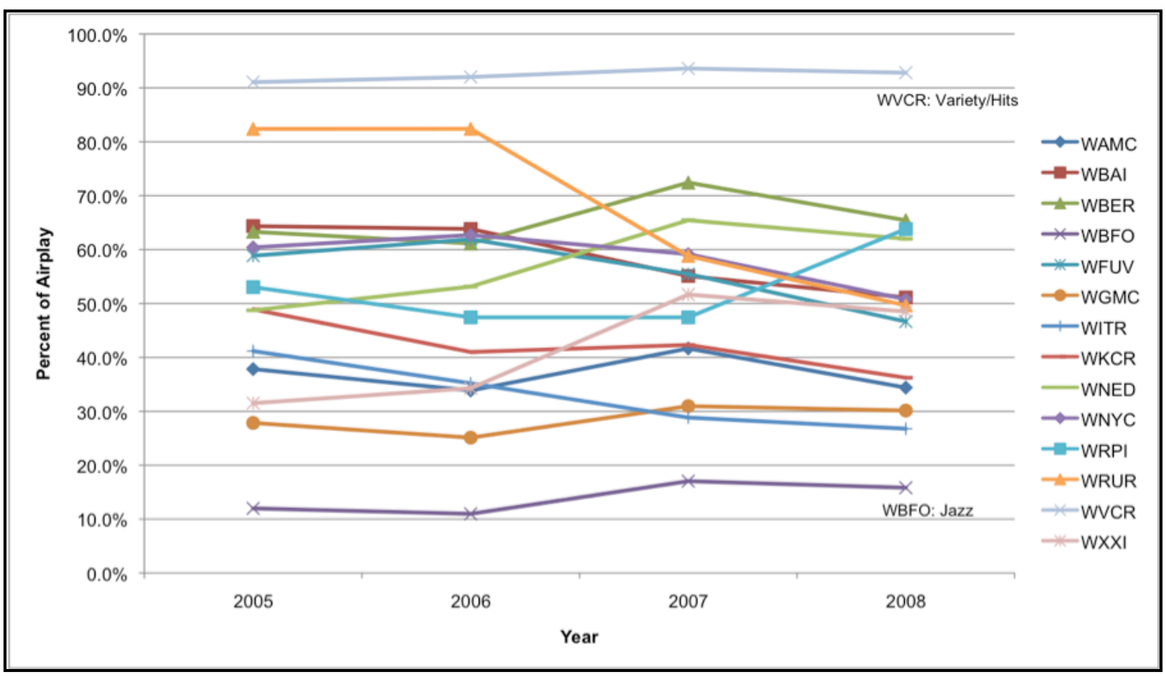
[Chart 2 shows the percent of airplay share for each of our label codes – Major, Indie, Disney, Legacy and No Label/TBD – from 2005-2008. See details pp. 14-17]

Chart 3: Major Label Airplay Share for NY State Stations Owned by Consent Decree Participants
2005-2008



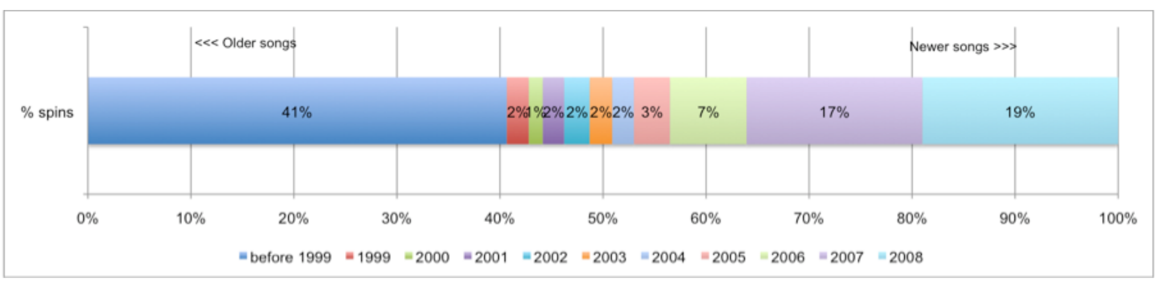
[Chart 3 shows major label airplay share for 18 NY-state based stations whose owners were party to the FCC consent decrees, 2005-2008. See details pp. 19-25]

Chart 9: Major Label Airplay Share for NY State Stations (Noncommercial)
2005-2008



Radio relies on the hits. When examining airplay by release date, the statewide data revealed that just 19 percent of an annual playlist is comprised of new releases, and that more than 40 percent of songs in a given playlist were more than five years old. This suggests that radio tends to play it safe; programmers sandwich new material in between recognizable hits from the past to keep core audiences from changing the dial when content becomes too unfamiliar. However, these programming choices are also indicative of the long-held strategy of forced scarcity among commercial radio broadcasters. Because there are so few slots available for new material on any given playlist, these slots become highly coveted and valuable. In such an environment, payola becomes an increasingly attractive option, as moneyed interests try to buy their way onto the air. While our research doesn't point directly to the prevalence of payola, examining the ratio of new releases to recognizable hits in a post-consent-decree environment suggests that the business climate that makes payola so enticing has not changed, and that access for independently released music is still a challenge.

Chart 16: Airplay by Release Date: NY State Music Stations
2008



[Chart 16 shows the ratio of older songs to newer songs at the NY State stations statewide. The total bar represents all the spins on the annual playlist for 2008. Each colored chunk on the bar shows the percentage of the annual spins attributed to songs with release dates before 1999, 1999, 2000, 2001, and so on. The percent of airplay for the oldest songs is on the left, while the newest songs are on the right. Details, pp. 32-36]

Indie label access has not increased. The playlist data show that major labels remain moderately more successful than indie labels in getting new songs added to station playlists, but vastly more successful in getting more spins for their songs. And, despite voluntary agreements crafted by the large commercial broadcasters, the FCC and A2IM designed to increase access, new songs from independent labels aren't being added to commercial stations in NY State in any greater number. Noncommercial stations, conversely, rely heavily on independent content, and typically give it the same amount of – if not more – spins than major label songs.

Table 14: Number of Non-Major Label Songs Added at NY State Stations Owned by Consent Decree Participants
2005 – 2008

Station name	Location	Owner	Format	Approx # Spins/Yr	2005	2006	2007	2008
WXRK	New York, NY	CBS	Rock	75,000	7	5	4	7
WWFS	New York, NY	CBS	AC	100,000	3	1	4	5
WEDG	Buffalo - Niagara Falls, NY	Citadel	Alternative	73,000	18	17	11	19
WPLJ	New York, NY	Citadel	Hot AC	85,000	4	ND	5	6
WFXF	Rochester, NY	Clear Channel	Classic Rock	85,000	0	0	0	0
WCPV	Plattsburgh, NY	Clear Channel	Classic Rock	68,000	1	0	1	3
WRVE	Albany, NY	Clear Channel	Rock AC	88,000	4	2	2	4
WLTW	New York, NY	Clear Channel	AC	98,000	6	1	4	1
WHRL	Albany, NY	Clear Channel	Alternative	110,000	11	23	10	13
WWPR	New York, NY	Clear Channel	Urban	94,000	15	12	14	19
WKKF	Albany, NY	Clear Channel	CHR/Pop	112,000	19	9	17	18
WKGS	Rochester, NY	Clear Channel	CHR/Pop	110,000	17	19	13	18
WBZA	Rochester, NY	Entercom	80s	82,000	0	0	0	0
WLKK	Buffalo - Niagara Falls, NY	Entercom	Classic Rock	50,000	0	2	1	1
WTSS	Buffalo - Niagara Falls, NY	Entercom	AC	90,000	16	4	3	1
WBEE	Rochester, NY	Entercom	Country	95,000	30	39	49	31
WKSE	Buffalo - Niagara Falls, NY	Entercom	CHR/Pop	100,000	5	ND	16	12
WPXY	Rochester, NY	Entercom	CHR/Pop	100,000	10	ND	11	11
				TOTAL NUMBER OF NEW, NON-MAJOR LABEL SONGS ADDED	166	134	165	169
				TOTAL NUMBER OF NEW, NON-MAJOR LABEL SONGS ADDED (adjusted for missing data)	166	154	165	169

[Table 14 shows the number of non-major label songs added at consent decree stations in the years 2004-2008. See details, 42-45]

This report was designed to examine radio station playlists in New York State from 2005-2008 to determine if the payola-related investigations, and the subsequent policy interventions, had any effect on the programming behavior of radio stations. The statewide data indicated almost no measurable change in airplay share from 2005-2008, with major label songs consistently securing 85 percent of airplay. Station playlist data analyzed by type of owner showed that CBS, Citadel, Clear Channel and Entercom continue to program their stations in lockstep with their competitors, closely aligning with other commercial stations with similar formats. Looking at airplay by release date shows that many commercial formats leave only small portions of their playlist for new material, with programmers choosing to sprinkle in new songs with well-worn hits. While this is clearly a programming choice that might make sense for a given station's target audience, there is subsequently very little room left for new releases on commercial stations. In examining whose new releases got added, the data indicates that major labels are routinely more successful at getting their songs added to commercial stations, and vastly more successful than indie labels at getting their songs played. Finally, we looked at whether indie label access has changed over the past four years at the stations that were party to the FCC consent decrees. The data found that there is very little measurable difference in the number of independent adds at these commercial stations between 2005 and 2008.

Does this mean that payola is influencing what gets played on radio, even after the Attorney General and FCC investigations? Some researchers suggest that payola occurs along somewhat of a predictable historic pattern, due to the circumstances of forced scarcity and the high value placed on airplay. But as we have stated, it's difficult – in fact, counterproductive—for us to claim this without any conclusive evidence. Instead, the picture that emerges from these data is one of status quo: radio that is simultaneously risk-averse and controlling of its greatest asset – access to the airwaves – a circumstance that was greatly compounded by the ownership consolidation resulting from the 1996 Telecommunications Act. The major labels continue to have the most success in gaining access, in large part because of the cumulative effect of mutually beneficial relationships and incentives paid over the years, as well as the twin bottlenecks that the oligopolistic radio and music industries represent.

Policy Recommendations

FMC's report also articulates a brief set of policy recommendations that will enhance the Federal Communications Commission's oversight of this public resource and improve the radio landscape for both listeners and the music industry.

Improve Data Collection

The radio and music industries participate in and employ some of the most robust and timely data monitoring systems available. There are private companies that measure audiences, that keep track of radio ownership transactions, market share and revenues, that track retail sales and box office grosses, and at least three services that monitor what is being played on commercial and noncommercial radio. Many radio stations, music labels and advertisers subscribe to these services so they can get up-to-the-minute information about their own activities, and those of their competitors.

In other words, radio stations are already very data rich. What's now required is the political will and organizational capacity at the FCC to determine what questions need to be asked, how frequently, and of whom, and then to seek out or collect the information it needs to be an effective regulator. Nonprofit organizations have been conducting much of this oversight work on behalf of the public interest, but clearly the FCC needs to play a greater role. The FCC could acquire data from commercial sources, or it could request data from stations as part of their responsibilities as broadcast licensees, or some of both. Regardless of the method, the FCC needs to clarify its oversight role, then rigorously and consistently monitor what's happening in radio in order to craft more effective policies and enhance accountability.

Refocus on Localism

Both anecdotal and empirical evidence indicate that commercial radio has become a risk-averse media that employs cookie-cutter formats across many radio properties. In recent months, commercial radio has also been the source of layoffs and downsizing as it struggles with both reduced ad revenue and huge debt loads racked up during the station buying spree following the passage of the 1996 Telecommunications Act.

The radio industry is clearly in crisis. Stations have lost touch with their local markets, but unfortunately, the industry seems to have responded by pushing for greater consolidation and syndication. We believe this is the wrong way forward, as radio's chief advantage in the modern media landscape is "live and local."

We join others in the media reform movement – and many in the radio industry itself – in calling for commercial radio to regain its local foothold and build programming in which serving its local community is its primary goal. We simultaneously call on the FCC to revisit the localism proceeding and design clear guidelines about how to measure whether its licensees are honoring their obligations to the communities in which they operate.

We know that locally oriented programming isn't as cost-effective as running a station using pre-programmed playlists and automated DJs, but it is radio's strongest asset in an increasingly saturated media environment. FMC and its partners have engaged in pilot projects with small commercial operators in NY State to determine best practices for engagement between programmers and the independent sector, and to set goals and identify mutually beneficial marketplace solutions. FMC is also examining noncommercial jazz and classical stations to understand what's working for these niche broadcasting formats, with an emphasis on pinpointing programming and operation strategies that reflect true localism and diversity. We hope that these projects will help us to convey information that other stations can use in the future.

Expand the number of voices

This report also shows us that major swaths of the music economy aren't currently represented on commercial radio. We talk about the many structural barriers to airplay for all types of labels, but for independent musicians in particular. Using other metrics to measure the profile of some indie artists, including retail and digital sales, TV appearances, large live shows, and licensing deals that place their songs in movies, video games and in ads, the lack of airplay on commercial radio for the same artists seems counterintuitive. Independent music belongs on commercial radio and is just as vital as the music currently receiving heavy airplay. Changing the prevailing culture at commercial radio will take a concentrated effort with all parties working in good faith basis; identifying structural barriers to airplay in this report represents part of this ongoing effort.

Finally, this also moment in time when the government can make a conscious effort to expand the number of broadcasters in this country. The passage of legislation to allow Low Power FM in more American towns and cities would provide local groups and organizations with an opportunity to serve their communities.

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Radio is a vital public resource with universal penetration, low-cost access, and a rich history of cultural impact. Regulators should strive for clear and transparent rules, so goals and policy initiatives can be measured and parties held accountable. Commercial radio has seen its market influence wane in recent years, but by asking the right questions, expanding community radio and enforcing the law, we can hopefully assist the industry in regaining its historic role and relevance to culture and community.

About the Report's Primary Author

Kristin Thomson is a community organizer, social policy researcher, entrepreneur and musician. After graduating with a BA in Sociology from Colorado College in 1989, Kristin moved to Washington, DC where she worked for two years as a national action organizer for the National Organization for Women. She left NOW to co-run Simple Machines, an independent record label, which released over seventy records and CDs in eight years. She also played guitar in the band Tsunami, which released four albums from 1991-1997 and toured extensively. In 2001, Kristin graduated with a Masters in

Urban Affairs and Public Policy from the University of Delaware. During her graduate program she was a recipient of a School of Urban Affairs and Public Policy Fellowship, and the Urban Affairs Association Award that recognized her thesis, *The Internet as an Agent of Change*, as a valuable contribution to the body of usable social knowledge. Kristin has been with Future of Music Coalition since 2001, and was co-author of FMC's 2002 study *Radio Deregulation: Has It Served Citizens and Musicians?*, the organizer of FMC's 2003 Analysis of Public Comments filed in the Broadcast Ownership Proceeding (which found 96.8 percent of comments filed at FCC opposed to further media deregulation), a contributor to FMC's 2006 study *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, and a reader/editor of a book on the sample license clearance process titled *Creative License*, to be published by Duke University Press in 2010. She lives in Philadelphia with her husband Bryan Dilworth, a concert promoter, and their son, where she also plays guitar in the lady-powered band, Ken.